IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16295 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PRAVINSINH NATHUBHA GOHIL - Petitioner(s)
Versus
STATE OF GUJARAT THR' TRANSPORT COMMISSIONER & 2 - Respondent(s)

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Appearance :
MR BM MANGUKIYA for Petitioner
Ms.Mini Nair,learned Assistant Government Pleader for Respondents

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 03/05/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

1. Rule. Ms.Mini Nair, learned Assistant Government Pleader, waives service of notice on behalf of the respondents. Having regard to the facts of the case, the petition is taken up for final disposal today.

2. By filing the instant petition under Article 226 of the Constitution, the petitioner has prayed to issue a writ of mandamus or any other appropriate writ or order to set aside the notice dated January 19,2006 issued by the Regional Transport officer, Bhavnagar by which the petitioner is called upon to make payment of Rs.7,06,784/- as amount of tax payable under the Bombay Motor Vehicles Tax Act, 1958. The petitioner has further prayed to issue an appropriate writ to direct the respondents not to raise demand of tax and penalty during the period for which the vehicle of the petitioner was detained by the concerned authority. The petitioner has also prayed to issue a writ of mandamus to direct the respondents to accept the amount of tax due and payable as per the proposal submitted by him to the respondent No.1 on July 13,2006. It is also prayed by

the petitioner to direct the respondents authorities to issue to him road worthy Certificate, passing certificate and other necessary documents so as to enable him to ply his vehicle on road. The petitioner has also prayed to issue a writ of mandamus to direct the respondents to render a decision on the application filed by the petitioner for interim relief, which according to the petitioner has been heard by the respondents long back. The petitioner has also prayed to issue a writ of mandamus directing the respondents to decide the appeal preferred by the petitioner forthwith.

3. This Court has heard the learned counsels for the parties. At the time of hearing of the petition, the consequential prayers made in paragraph 56(A) to (C) are not pressed at this stage and, therefore, the Court has not gone into the merits of those prayers. What is prayed on behalf of the petitioner is that appropriate direction should be given to the respondents to decide the appeal as well as application for interim relief filed therein, within the time to be stipulated by the Court and till then coercive recovery of amount of tax should be stayed.

4. Ms.Mini Nair, learned Assistant Government Pleader, on instructions of Mr.Sanjay Pandya, Motor Vehicle Prosecutor, Office of the Transport Commissioner, Gandhinagar, who is personally present in the Court, states at the Bar that the application for interim relief submitted by the petitioner in the Appeal was decided and rejected by the appellate authority on July 12,2006, regarding which oral intimation was given to the petitioner. Having regard to the facts of the case, this Court is of the opinion that oral communication of the order rejecting the application filed for interim relief cannot be said to be proper or effective communication of the order passed and, therefore, appropriate directions will have to be given to the respondents while disposing of the instant petition. The record does indicate that Appeal No.45 of 2006 filed by the petitioner is yet disposed of by the Transport Commissioner, Gandhinagar and, therefore, appropriate direction also will have to be given to the said authority to dispose of the appeal on merits and in accordance with law within the time to be stipulated in this order.

5. For the foregoing reasons, the petition partly

succeeds. The Transport Commissioner, Gandhinagar is hereby directed to dispose of Appeal No.45 of 2006 on merits and in accordance with law, as early as possible and preferably within two months from today. It is further directed that during the pendency and final disposal of the appeal, no coercive steps shall be taken by Circle Officer, Motor Vehicles Tax Recovery, R.T.O.Office, Bhavnagar to recover the amount mentioned in notice dated April 3,2007 issued by him, which is produced by the petitioner at Annexure "A" to Civil Application No.5959 of 2007, which is filed in the instant petition. Rule is made absolute to the extent indicated herein-above. There shall be no orders as to costs. Direct service is permitted.

(J.M.Panchal,J)

(Smt.Abhilasha Kumari,J)

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